

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Applications of WorldCom, Inc. and )  
MCI Communications Corporation for ) CC Docket No. 97-211  
Transfer of Control of MCI )  
Communications to WorldCom, Inc. )  
 )

COMMENTS OF SPRINT CORPORATION

Sprint Corporation, pursuant to the Commission's Public Notice (DA 98-820) released April 29, 1998, in the above-captioned proceeding, hereby respectfully submits its Comments on the proposed protective order of WorldCom and MCI (collectively Applicants) in the above-referenced matter.

Sprint agrees confidential materials submitted to the Commission by parties to this proceeding must be subject to a protective order that "will ensure the confidentiality of such materials." Notice at 1. At the same time, interested parties must be afforded the opportunity to participate fully in this proceeding. Thus, the Commission's approach must be to "enable the parties that sign the protective order to have access to the [Applicants' confidential] materials subject to the terms and conditions of the protective order." *Id.* at 1.

The protective order proposed by the Applicants seeks to limit disclosure to "outside counsel for the parties to the

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instant proceeding..." April 27 Letter to Ms. Magalie Salas, Secretary, FCC from Andrew D. Lipman, Counsel for WorldCom and Anthony C. Epstein, Counsel for MCI ("Applicant's Letter") at 2. Such limitation is unjustified and "unfair." See *Implementation of the Cable Television Consumer Protection And Competition Act of 1992*, 10 FCC Rcd 1902, 1934, ¶71 (1994). Under ordinary circumstances, the selection of counsel by a party to a Commission proceeding is one for the party to make. Such party may choose to utilize in-house staff or retain outside counsel as workload demands, the nature of the issues involved, and other factors warrant. In this proceeding, Sprint has chosen to proceed by using in-house counsel: employees who have long experience representing Sprint before the Commission and who have been repeatedly trusted with confidential documents. There is no apparent reason -- and it certainly would be inefficient -- to require Sprint to switch counsel at this stage of the proceeding.

Moreover, Applicants have not offered any valid argument to limit disclosure of the documents in question to outside counsel. They simply state that such limitation is appropriate because the materials being requested by the Commission are "highly confidential" and were submitted to the Department of Justice ("Department") under statutory procedures, i.e., the Antitrust Civil Process Act and the Hart-Scott-Rodino Antitrust

Improvements Act ("HSR"), that restrict disclosure. Applicant's Letter at 1. But the fact that such documents "may contain privileged or confidential trade secrets and commercial or financial information that would not customarily be released to the public," *id.* at 2 (internal quotes omitted) does not justify denying in-house counsel who sign the protective order the opportunity to review the information in order to fully protect and represent the interests of their employer before the Commission in this proceeding. As noted, Sprint's in-house counsel have represented Sprint in many proceedings before this Commission in which they have gained access to highly confidential materials under protective orders. In not one of these proceedings has there even been the hint that Sprint's in-house counsel violated the terms of such protective orders.

Similarly, the fact that such materials have been submitted to the Department as part of the Hart-Scott-Rodino pre-merger review process does not justify preventing in-house counsel for the parties to the Commission's proceeding from reviewing such materials. Applicants cite no precedent in which the Commission barred in-house counsel of the parties involved from reviewing confidential materials on grounds that the documents involved were previously submitted to the Department under HSR. In fact, in the Bell Atlantic/Nynex merger case, the Commission required Hart-Scott-Rodino documents submitted by Bell Atlantic and Nynex

to be made available to parties to that proceeding pursuant to a protective order that did not restrict such disclosure to outside counsel. *Applications of Nynex and Bell Atlantic for Consent to Transfer Control of Nynex Corporation and Its Subsidiaries*, 9 Communications Reg. (P&F) 187 (1997).

Sprint recognizes, of course, that in certain proceedings the Commission may find it necessary to limit the disclosure of confidential materials to outside counsel of the parties to a proceeding regardless of the burdens such limitation may impose. In this regard, the Commission recently issued a decision in which it limited access to sensitive information of the submitting party to outside counsel. *In Re Applications of TCI Satellite Entertainment and Primestar, Order Adopting Protective Order*, 1998 WL 166172 (F.C.C.) (released April 10, 1998). It found that such limitation was "appropriate in this proceeding" (¶4) in which the in-house counsel for one of the parties -- Primestar's main competitor -- is one of the key decision-makers in the company both with respect to current business operations and future business plans.

Such unique factors are not present in the instant proceeding. The in-house counsel representing Sprint in this matter are not engaged in making business decisions. Nor are they involved in Sprint's strategic planning efforts. Of course, they may be aware of Sprint's business plans (as may be

the case for outside counsel as well);<sup>1</sup> but the responsibility of Sprint's inside counsel here is to represent Sprint's interests before this Commission and other government agencies in light of such plans.

In any case, under the terms of the proposed protective order, Sprint will be required to identify for the benefit of MCI and WorldCom the in-house counsel that are seeking access to confidential materials at least five business days before such counsel are permitted to review to the confidential documents. This will enable both MCI and WorldCom to voice any reasonable objections to giving specific counsel, who they may suspect are too closely tied to Sprint's business planning activities, access to such materials. This is all that is necessary to protect MCI's and WorldCom's legitimate interests in protecting the confidentiality of their sensitive documents in a public proceeding.

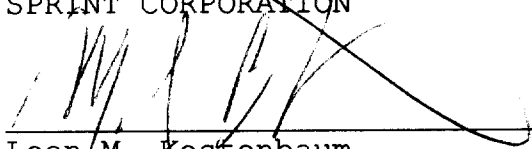
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<sup>1</sup>Outside counsel can also be in-house employees of the clients they represent. In this regard, one of the signatories of the Applicant's Letter here was at one time the general counsel of MFS (one of WorldCom's previous acquisitions) as well as outside counsel to the company.

Accordingly, Sprint respectfully requests that the Commission modify the proposed protective order to allow in-house counsel of the parties to gain access to confidential materials of MCI and WorldCom.

Respectfully submitted,

SPRINT CORPORATION



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May 7, 1998

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **Comments** of Sprint Corporation was sent by hand or by United States first-class mail, postage prepaid, on this the 7<sup>th</sup> day of May, 1998 to the parties on the attached list.



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